

AMENDED IN ASSEMBLY JUNE 19, 2008

AMENDED IN ASSEMBLY MAY 8, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2914**

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**Introduced by Assembly Member Charles Calderon  
(Principal coauthor: Assembly Member Galgiani)**

February 22, 2008

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An act to amend Sections 6011 and 6012 of, to add Sections 6051.9 and 6201.9 to, and to add Part 14.5 (commencing with Section 33001), Part 14.7 (commencing with Section 33100), and Part 32 (commencing with Section 60131) to, Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2914, as amended, Charles Calderon. Taxation: Adult Entertainment-Venue Impact Fund.

The Sales and Use Tax Law imposes a tax on the sale of or the storage, use, or other consumption of, tangible personal property in this state at specified rates.

This bill would impose a tax on the sale of, or the storage, use, or other consumption of, tangible personal property that is adult material, as defined, in this state at a rate of ~~25%~~ 8.3%. This bill would express the intent of the Legislature that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the Adult Entertainment-Venue Impact Fund, which would be created by this bill.

This bill would, in addition, impose a tax on gross receipts, as defined, of an adult entertainment venue, as defined, in this state at a rate of 25%. The tax would generally be collected, administered, and enforced in the same manner as the fees administered under the Fee Collection Procedures Law. This bill would express the intent of the Legislature that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the Adult Entertainment Venue Impact Fund. This bill would provide that moneys in the fund, upon appropriation by the Legislature, be used to ameliorate the secondary effects of adult entertainment and adult entertainment venues, as provided.

Existing law imposes various taxes with respect to the sale, use, or distribution of various products sold in this state.

This bill would impose a tax at the rate of ~~25%~~ 8.3% on the ~~total gross charges, as defined, incurred by a purchaser for the pay-per-view viewing of adult entertainment movies, as provided~~ receipts from the sale of qualified tangible personal property, as defined, of a qualified business whose gross receipts from the sale or rental of adult material exceed 50% of all gross receipts of the retail establishment. This bill would express the intent of the Legislature that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the Adult Entertainment Venue Impact Fund.

This bill would also impose a tax at the rate of ~~25%~~ 8.3% of the qualified gross receipts of a qualified business, as defined, where the business has more than 50% of its gross receipts derived from the production, distribution, or sales of adult entertainment movies or videos, as provided.

This bill makes findings and declarations with regard to *the adult entertainment, adult entertainment venues, and adult entertainment merchandise entertainment industry and adult entertainment venues* and the taxes imposed by this bill.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) A substantial percentage of adult entertainment ~~and adult~~  
4 ~~entertainment merchandise~~ is produced in California.

5     (b) The in-state production of adult entertainment ~~and adult~~  
6 ~~entertainment merchandise~~ has numerous negative secondary  
7 effects on the people of this state. Specifically, the production of  
8 adult entertainment ~~and adult entertainment merchandise~~:

9         (1) Increases crime at or near production locations.

10        (2) Adversely impacts the mental health of, and leads to  
11 increased alcohol and substance abuse by, those involved in the  
12 ~~production of adult entertainment and adult entertainment~~  
13 ~~merchandise~~; *adult entertainment industry*.

14        (3) Increases the performers' chances of contracting a sexually  
15 transmitted disease.

16        (4) Encourages unsafe sex by consumers.

17        (5) Often encourages sexually aggressive behavior towards  
18 women.

19        (6) Increases the medical costs of the participants in the  
20 ~~production of adult entertainment and adult entertainment~~  
21 ~~merchandise~~; *adult entertainment industry*.

22     (c) The Internet provides the children of this state with easy  
23 access to sexual content, which may negatively influence their  
24 developing attitudes toward sexuality and relationships.

25     (d) Adult entertainment venues adversely impact the character  
26 of local neighborhoods by, among other things, reducing local  
27 property values, curtailing development, and engendering many  
28 types of criminal activities.

29     (e) Adult entertainment venues endanger the health, safety, and  
30 welfare of citizens in their vicinity.

31     (f) These findings are consistent with, and supported by, the  
32 findings of numerous municipalities. For example, when the City  
33 of Los Angeles conducted a comprehensive study of adult  
34 entertainment venues, it concluded that such establishments are  
35 associated with higher rates of prostitution, robbery, assault, and  
36 theft in surrounding communities.

1 (g) These negative secondary effects, in turn, drain public  
2 resources dedicated to public social service programs, and place  
3 a significant strain on the courts of this state.

4 (h) The taxes imposed by this measure are not intended as a  
5 prohibition of legally protected forms of expression.

6 (i) The taxes imposed by this measure are intended to represent  
7 a balancing of competing interests. Specifically, these taxes are  
8 designed to balance the need to combat the negative secondary  
9 effects of the adult entertainment industry against the legally  
10 protected rights of adult entertainment producers and consumers.

11 (j) The taxes imposed by this measure are not intended to allow  
12 or license any business, establishment, or activity that would  
13 otherwise be unlawful under the laws of this state or of the United  
14 States.

15 (k) The taxes imposed by this measure are not intended to affect,  
16 or in any way limit, the ability of local governments to address the  
17 negative secondary effects of adult entertainment venues.

18 SEC. 2. Section 6011 of the Revenue and Taxation Code is  
19 amended to read:

20 6011. (a) "Sales price" means the total amount for which  
21 tangible personal property is sold or leased or rented, as the case  
22 may be, valued in money, whether paid in money or otherwise,  
23 without any deduction on account of any of the following:

- 24 (1) The cost of the property sold.  
25 (2) The cost of materials used, labor or service cost, interest  
26 charged, losses, or any other expenses.  
27 (3) The cost of transportation of the property, except as excluded  
28 by other provisions of this section.

29 (b) The total amount for which the property is sold or leased or  
30 rented includes all of the following:

- 31 (1) Any services that are a part of the sale.  
32 (2) Any amount for which credit is given to the purchaser by  
33 the seller.  
34 (3) The amount of any tax imposed by the United States upon  
35 producers and importers of gasoline and the amount of any tax  
36 imposed pursuant to Part 2 (commencing with Section 7301) of  
37 this division.

38 (c) "Sales price" does not include any of the following:

- 39 (1) Cash discounts allowed and taken on sales.

1 (2) The amount charged for property returned by customers  
2 when that entire amount is refunded either in cash or credit, but  
3 this exclusion shall not apply in any instance when the customer,  
4 in order to obtain the refund, is required to purchase other property  
5 at a price greater than the amount charged for the property that is  
6 returned. For the purpose of this section, refund or credit of the  
7 entire amount shall be deemed to be given when the purchase price  
8 less rehandling and restocking costs are refunded or credited to  
9 the customer. The amount withheld for rehandling and restocking  
10 costs may be a percentage of the sales price determined by the  
11 average cost of rehandling and restocking returned merchandise  
12 during the previous accounting cycle.

13 (3) The amount charged for labor or services rendered in  
14 installing or applying the property sold.

15 (4) (A) The amount of any tax (not including, however, any  
16 manufacturers' or importers' excise tax, except as provided in  
17 subparagraph (B)) imposed by the United States upon or with  
18 respect to retail sales whether imposed upon the retailer or the  
19 consumer.

20 (B) The amount of manufacturers' or importers' excise tax  
21 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
22 Code for which the purchaser certifies that he or she is entitled to  
23 either a direct refund or credit against his or her income tax for  
24 the federal excise tax paid or for which the purchaser issues a  
25 certificate pursuant to Section 6245.5.

26 (5) The amount of any tax imposed by any city, county, city  
27 and county, or rapid transit district within the State of California  
28 upon or with respect to retail sales of tangible personal property,  
29 measured by a stated percentage of sales price or gross receipts,  
30 whether imposed upon the retailer or the consumer.

31 (6) The amount of any tax imposed by any city, county, city  
32 and county, or rapid transit district within the State of California  
33 with respect to the storage, use or other consumption in that city,  
34 county, city and county, or rapid transit district of tangible personal  
35 property measured by a stated percentage of sales price or purchase  
36 price, whether the tax is imposed upon the retailer or the consumer.

37 (7) Separately stated charges for transportation from the  
38 retailer's place of business or other point from which shipment is  
39 made directly to the purchaser, but the exclusion shall not exceed  
40 a reasonable charge for transportation by facilities of the retailer

1 or the cost to the retailer of transportation by other than facilities  
2 of the retailer. However, if the transportation is by facilities of the  
3 retailer, or the property is sold for a delivered price, this exclusion  
4 shall be applicable solely with respect to transportation which  
5 occurs after the purchase of the property is made.

6 (8) Charges for transporting landfill from an excavation site to  
7 a site specified by the purchaser, either if the charge is separately  
8 stated and does not exceed a reasonable charge or if the entire  
9 consideration consists of payment for transportation.

10 (9) The amount of any motor vehicle, mobilehome, or  
11 commercial coach fee or tax imposed by and paid the State of  
12 California that has been added to or is measured by a stated  
13 percentage of the sales or purchase price of a motor vehicle,  
14 mobilehome, or commercial coach.

15 (10) (A) The amount charged for intangible personal property  
16 transferred with tangible personal property in any technology  
17 transfer agreement, if the technology transfer agreement separately  
18 states a reasonable price for the tangible personal property.

19 (B) If the technology transfer agreement does not separately  
20 state a price for the tangible personal property, and the tangible  
21 personal property or like tangible personal property has been  
22 previously sold or leased, or offered for sale or lease, to third  
23 parties at a separate price, the price at which the tangible personal  
24 property was sold, leased, or offered to third parties shall be used  
25 to establish the retail fair market value of the tangible personal  
26 property subject to tax. The remaining amount charged under the  
27 technology transfer agreement is for the intangible personal  
28 property transferred.

29 (C) If the technology transfer agreement does not separately  
30 state a price for the tangible personal property, and the tangible  
31 personal property or like tangible personal property has not been  
32 previously sold or leased, or offered for sale or lease, to third  
33 parties at a separate price, the retail fair market value shall be equal  
34 to 200 percent of the cost of materials and labor used to produce  
35 the tangible personal property subject to tax. The remaining amount  
36 charged under the technology transfer agreement is for the  
37 intangible personal property transferred.

38 (D) For purposes of this paragraph, “technology transfer  
39 agreement” means any agreement under which a person who holds  
40 a patent or copyright interest assigns or licenses to another person

1 the right to make and sell a product or to use a process that is  
2 subject to the patent or copyright interest.

3 (11) The amount of any tax imposed upon diesel fuel pursuant  
4 to Part 31 (commencing with Section 60001).

5 (12) (A) The amount of tax imposed by any Indian tribe within  
6 the State of California with respect to a retail sale of tangible  
7 personal property measured by a stated percentage of the sales or  
8 purchase price, whether the tax is imposed upon the retailer or the  
9 consumer.

10 (B) The exclusion authorized by subparagraph (A) shall only  
11 apply to those retailers who are in substantial compliance with this  
12 part.

13 (13) The amount of any tax imposed pursuant to *Sections 6051.9*  
14 *and 6201.9* Part 14.5 (commencing with Section ~~33001~~ 33001),  
15 *Part 14.7 (commencing with Section 33100), and Part 32*  
16 *(commencing with Section 60131)* of this division.

17 SEC. 3. Section 6012 of the Revenue and Taxation Code is  
18 amended to read:

19 6012. (a) "Gross receipts" mean the total amount of the sale  
20 or lease or rental price, as the case may be, of the retail sales of  
21 retailers, valued in money, whether received in money or otherwise,  
22 without any deduction on account of any of the following:

23 (1) The cost of the property sold. However, in accordance with  
24 any rules and regulations as the board may prescribe, a deduction  
25 may be taken if the retailer has purchased property for some other  
26 purpose than resale, has reimbursed his or her vendor for tax which  
27 the vendor is required to pay to the state or has paid the use tax  
28 with respect to the property, and has resold the property prior to  
29 making any use of the property other than retention, demonstration,  
30 or display while holding it for sale in the regular course of business.  
31 If that deduction is taken by the retailer, no refund or credit will  
32 be allowed to his or her vendor with respect to the sale of the  
33 property.

34 (2) The cost of the materials used, labor or service cost, interest  
35 paid, losses, or any other expense.

36 (3) The cost of transportation of the property, except as excluded  
37 by other provisions of this section.

38 (4) The amount of any tax imposed by the United States upon  
39 producers and importers of gasoline and the amount of any tax

1 imposed pursuant to Part 2 (commencing with Section 7301) of  
2 this division.

3 (b) The total amount of the sale or lease or rental price includes  
4 all of the following:

5 (1) Any services that are a part of the sale.

6 (2) All receipts, cash, credits and property of any kind.

7 (3) Any amount for which credit is allowed by the seller to the  
8 purchaser.

9 (c) "Gross receipts" do not include any of the following:

10 (1) Cash discounts allowed and taken on sales.

11 (2) Sale price of property returned by customers when that entire  
12 amount is refunded either in cash or credit, but this exclusion shall  
13 not apply in any instance when the customer, in order to obtain  
14 the refund, is required to purchase other property at a price greater  
15 than the amount charged for the property that is returned. For the  
16 purpose of this section, refund or credit of the entire amount shall  
17 be deemed to be given when the purchase price less rehandling  
18 and restocking costs are refunded or credited to the customer. The  
19 amount withheld for rehandling and restocking costs may be a  
20 percentage of the sales price determined by the average cost of  
21 rehandling and restocking returned merchandise during the  
22 previous accounting cycle.

23 (3) The price received for labor or services used in installing or  
24 applying the property sold.

25 (4) (A) The amount of any tax (not including, however, any  
26 manufacturers' or importers' excise tax, except as provided in  
27 subparagraph (B)) imposed by the United States upon or with  
28 respect to retail sales whether imposed upon the retailer or the  
29 consumer.

30 (B) The amount of manufacturers' or importers' excise tax  
31 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
32 Code for which the purchaser certifies that he or she is entitled to  
33 either a direct refund or credit against his or her income tax for  
34 the federal excise tax paid or for which the purchaser issues a  
35 certificate pursuant to Section 6245.5.

36 (5) The amount of any tax imposed by any city, county, city  
37 and county, or rapid transit district within the State of California  
38 upon or with respect to retail sales of tangible personal property  
39 measured by a stated percentage of sales price or gross receipts  
40 whether imposed upon the retailer or the consumer.



1 (6) The amount of any tax imposed by any city, county, city  
2 and county, or rapid transit district within the State of California  
3 with respect to the storage, use or other consumption in that city,  
4 county, city and county, or rapid transit district of tangible personal  
5 property measured by a stated percentage of sales price or purchase  
6 price, whether the tax is imposed upon the retailer or the consumer.

7 (7) Separately stated charges for transportation from the  
8 retailer's place of business or other point from which shipment is  
9 made directly to the purchaser, but the exclusion shall not exceed  
10 a reasonable charge for transportation by facilities of the retailer  
11 or the cost to the retailer of transportation by other than facilities  
12 of the retailer. However, if the transportation is by facilities of the  
13 retailer, or the property is sold for a delivered price, this exclusion  
14 shall be applicable solely with respect to transportation which  
15 occurs after the sale of the property is made to the purchaser.

16 (8) Charges for transporting landfill from an excavation site to  
17 a site specified by the purchaser, either if the charge is separately  
18 stated and does not exceed a reasonable charge or if the entire  
19 consideration consists of payment for transportation.

20 (9) The amount of any motor vehicle, mobilehome, or  
21 commercial coach fee or tax imposed by and paid to the State of  
22 California that has been added to or is measured by a stated  
23 percentage of the sales or purchase price of a motor vehicle,  
24 mobilehome, or commercial coach.

25 (10) (A) The amount charged for intangible personal property  
26 transferred with tangible personal property in any technology  
27 transfer agreement, if the technology transfer agreement separately  
28 states a reasonable price for the tangible personal property.

29 (B) If the technology transfer agreement does not separately  
30 state a price for the tangible personal property, and the tangible  
31 personal property or like tangible personal property has been  
32 previously sold or leased, or offered for sale or lease, to third  
33 parties at a separate price, the price at which the tangible personal  
34 property was sold, leased, or offered to third parties shall be used  
35 to establish the retail fair market value of the tangible personal  
36 property subject to tax. The remaining amount charged under the  
37 technology transfer agreement is for the intangible personal  
38 property transferred.

39 (C) If the technology transfer agreement does not separately  
40 state a price for the tangible personal property, and the tangible

1 personal property or like tangible personal property has not been  
2 previously sold or leased, or offered for sale or lease, to third  
3 parties at a separate price, the retail fair market value shall be equal  
4 to 200 percent of the cost of materials and labor used to produce  
5 the tangible personal property subject to tax. The remaining amount  
6 charged under the technology transfer agreement is for the  
7 intangible personal property transferred.

8 (D) For purposes of this paragraph, “technology transfer  
9 agreement” means any agreement under which a person who holds  
10 a patent or copyright interest assigns or licenses to another person  
11 the right to make and sell a product or to use a process that is  
12 subject to the patent or copyright interest.

13 (11) The amount of any tax imposed upon diesel fuel pursuant  
14 to Part 31 (commencing with Section 60001).

15 (12) (A) The amount of tax imposed by any Indian tribe within  
16 the State of California with respect to a retail sale of tangible  
17 personal property measured by a stated percentage of the sales or  
18 purchase price, whether the tax is imposed upon the retailer or the  
19 consumer.

20 (B) The exclusion authorized by subparagraph (A) shall only  
21 apply to those retailers who are in substantial compliance with this  
22 part.

23 For purposes of the sales tax, if the retailers establish to the  
24 satisfaction of the board that the sales tax has been added to the  
25 total amount of the sale price and has not been absorbed by them,  
26 the total amount of the sale price shall be deemed to be the amount  
27 received exclusive of the tax imposed. Section 1656.1 of the Civil  
28 Code shall apply in determining whether or not the retailers have  
29 absorbed the sales tax.

30 (13) The amount of any tax imposed pursuant to *Sections 6051.9*  
31 *and 6201.9* Part 14.5 (commencing with Section ~~33001~~ 33001),  
32 *Part 14.7 (commencing with Section 33100), and Part 32*  
33 *(commencing with Section 60131)* of this division.

34 SEC. 4. Section 6051.9 is added to the Revenue and Taxation  
35 Code, to read:

36 6051.9. (a) (1) In addition to any other taxes imposed by this  
37 part for the privilege of selling tangible personal property at retail,  
38 to the extent permitted by state or federal law, a tax is hereby  
39 imposed upon all retailers at the rate of ~~25~~ 8.3 percent of the gross  
40 receipts from the sale of qualified tangible personal property sold

1 at retail, *including* through the Internet, or similar electronic means,  
2 in the state.

3 (2) For purposes of this section, “qualified tangible personal  
4 property” means any item, including, but not limited to, a book,  
5 magazine, periodical, film, videotape, digital image, or digitally  
6 or computer-manipulated image, *or any item that is digitally*  
7 *downloaded through the Internet, or similar electronic means*, that  
8 falls within the recordkeeping requirements of Section 2257 of  
9 Title 18 of the United States Code.

10 (b) Notwithstanding any other provision of this part, it is the  
11 intent of the Legislature that all revenues, less refunds and the  
12 board’s costs of administration, derived from the ~~25~~ 8.3 percent  
13 tax imposed pursuant to this section be transferred to the Treasurer  
14 to be deposited in the State Treasury to the credit of the Adult  
15 Entertainment ~~Venue~~ Impact Fund.

16 SEC. 5. Section 6201.9 is added to the Revenue and Taxation  
17 Code, to read:

18 6201.9. (a) (1) In addition to the taxes imposed by ~~any other~~  
19 ~~provision of~~ this part, to the extent permitted by state or federal  
20 law, an excise tax is hereby imposed on the storage, use, or other  
21 consumption in this state of qualified tangible personal property  
22 purchased from any retailer for storage, use, or other consumption  
23 in this state, *including any purchases from any retailer through*  
24 *the Internet, or similar electronic means*, at the rate of ~~25~~ 8.3  
25 percent of the sales price of the property.

26 (2) For purposes of this section, “qualified tangible personal  
27 property” means any item, including, but not limited to, a book,  
28 magazine, periodical, film, videotape, digital image, or digitally  
29 or computer-manipulated image, *or any item that is digitally*  
30 *downloaded through the Internet, or similar electronic means*, that  
31 falls within the recordkeeping requirements of Section 2257 of  
32 Title 18 of the United States Code.

33 (b) Notwithstanding any other provision of this part, it is the  
34 intent of the Legislature that all revenues, less refunds and the  
35 board’s costs of administration, derived from the ~~25~~ 8.3 percent  
36 tax imposed pursuant to this section be transferred to the Treasurer  
37 to be deposited in the State Treasury to the credit of the Adult  
38 Entertainment ~~Venue~~ Impact Fund.

39 SEC. 6. Part 14.5 (commencing with Section 33001) is added  
40 to Division 2 of the Revenue and Taxation Code, to read:

## PART 14.5. ADULT ENTERTAINMENT VENUE TAX

33001. Except where the context otherwise requires, the definitions set forth in Part 1 (commencing with Section 6001) govern the construction of this part.

~~33003.~~

33002. For purposes of this part, the following definitions apply:

(a) (1) “Adult entertainment venue” means ~~any~~ *either* of the following:

~~(A) A retail establishment whose gross receipts from the sale or rental of adult material exceed 50 percent of all gross receipts of the retail establishment.~~

~~(B)~~

(A) The premises of any facility located in California that provides a public or private viewing of adult material.

~~(C)~~

(B) The public premises of any facility located in California that offers live sexually explicit conduct that is prohibited to audiences under 18 years of age or 21 years of age, depending on the sale of alcoholic beverages on the premises.

~~(2) “Adult entertainment venue” shall not mean:~~

~~(A) A retail establishment that is open to the general public and that segregates adult material by restricted access to persons 18 years of age or older, so long as the gross receipts from transactions involving adult material do not exceed 5 percent of all gross receipts of the retail establishment.~~

~~(B) A business whose primary purpose is the provision of live~~

(2) “Adult entertainment venue” shall not mean a business whose primary purpose is the provision of live performances that may include the display of complete nudity, so long as the live performance is a legitimate play, opera, ballet, or concert at a concert house, playhouse or theater, museum, or educational institution or facility on whose premises alcoholic beverages may be sold but which derives less than 20 percent of its gross receipts from the sale of alcoholic beverages.

(b) “Adult material” includes, but is not limited to, all of the following:

(1) Harmful matter, as defined in Section 313 of the Penal Code.

1 (2) Live sexually explicit conduct provided at a business  
2 establishment.

3 (3) Any item that includes sexually explicit conduct or is subject  
4 to the requirements of Section 2257 of Title 18 of the United States  
5 Code.

6 (c) “Gross receipts” includes receipts, from whatever source,  
7 received by the adult entertainment venue, excepting any sales  
8 taxes imposed on the transaction.

9 (d) “Sexually explicit conduct” means any of the following  
10 actual, but not simulated, conduct:

11 (1) Sexual intercourse, including genital-genital, oral-genital,  
12 anal-genital, or oral-anal, whether between persons of the same or  
13 opposite sex.

14 (2) Masturbation.

15 (3) Sadistic or masochistic abuse.

16 (4) Lascivious exhibition of the genitals or pubic area of any  
17 person.

18 ~~33004.~~

19 33003. In addition to any tax imposed under Chapter 2  
20 (commencing with Section 6051) of Part 1, for the privilege of  
21 selling tangible personal property at retail, a tax is hereby imposed  
22 upon all adult entertainment venues at the rate of 25 percent of the  
23 gross receipts received in this state on or after ~~May 1~~, *October 1*,  
24 2008.

25 ~~33005.~~

26 33004. To the extent feasible or practicable, Section 1656.1 of  
27 the Civil Code, and the provisions of Part 30 (commencing with  
28 Section 55001) shall govern determinations, collections of tax,  
29 overpayments and refunds, and administration under this part.

30 ~~33006.~~

31 33005. The board shall enforce the provisions of this part and  
32 may prescribe, adopt, and enforce rules and regulations relating  
33 to the administration and enforcement of this part. The board may  
34 prescribe the extent to which any ruling or regulation shall be  
35 applied without retroactive effect.

36 ~~33007.~~

37 33006. (a) All amounts required to be paid to the state under  
38 this part shall be paid to the board in the form of remittances  
39 payable to the State Board of Equalization. It is the intent of the  
40 Legislature that the board shall transmit the payments, less refunds

1 and the board's costs of administration, to the Treasurer to be  
2 deposited in the State Treasury to the credit of the Adult  
3 Entertainment-Venue Impact Fund, which is hereby created.

4 (b) Moneys in the Adult Entertainment-Venue Impact Fund  
5 shall, upon appropriation by the Legislature, be used to ameliorate  
6 the secondary effects of adult entertainment and adult entertainment  
7 venues. Amelioration of secondary effects includes, but is not  
8 limited to:

9 (1) Increased funding to state and local law enforcement to  
10 combat any increased criminal activity in the vicinity of adult  
11 entertainment venues including, but not limited to, criminal activity  
12 like the illegal sale of controlled substances, prostitution, and  
13 crimes against women.

14 (2) Programs to address the negative secondary effects of adult  
15 entertainment venues on property values.

16 (3) Provision of funding to address related health issues,  
17 including the testing and treatment of sexually transmitted diseases  
18 and mental health treatment.

19 (4) Supplemental funding for existing state and local substance  
20 abuse treatment programs.

21 (5) Supplemental funding for Child Protective Services.

22 (6) Supplemental funding to the courts to aid the effective  
23 administration of justice within the state.

24 (7) Supplemental funding for state and local administration of  
25 elementary and secondary education.

26 (8) Supplemental funding for state and local administration of  
27 public assistance and public social service programs.

28 (9) Supplemental funding for state and local law enforcement  
29 to aid in the effort to combat sexual predators.

30 SEC. 7. Part 14.7 (commencing with Section 33100) is added  
31 to Division 2 of the Revenue and Taxation Code, to read:

32  
33 PART 14.7. ADULT ENTERTAINMENT TAX  
34

35 33100. Except where the context otherwise requires, the  
36 definitions set forth in Part 1 (commencing with Section 6001)  
37 govern the construction of this part.

38 33101. *On and after October 1, 2008, in addition to any other*  
39 *tax imposed by this division, for the privilege of selling tangible*  
40 *personal property at retail, to the extent permitted by state or*

1 *federal law, a tax is hereby imposed upon all qualified businesses*  
2 *at the rate of 8.3 percent of the gross receipts from the sale of*  
3 *qualified tangible personal property sold at retail in the state.*

4 *33102. For purposes of this part, the following definitions*  
5 *apply:*

6 *(a) "Adult material" includes, but is not limited to, all of the*  
7 *following:*

8 *(1) Harmful matter, as defined in Section 313 of the Penal Code.*

9 *(2) Any item that includes sexually explicit conduct or is subject*  
10 *to the requirements of Section 2257 of Title 18 of the United States*  
11 *Code.*

12 *(b) "Gross receipts" includes receipts, from whatever source,*  
13 *received by the qualified business, excepting any sales taxes*  
14 *imposed on the transaction.*

15 *(c) (1) "Qualified business" means a retail establishment whose*  
16 *gross receipts from the sale or rental of adult material exceed 50*  
17 *percent of all gross receipts of the retail establishment.*

18 *(2) "Qualified business" shall not mean a retail establishment*  
19 *that is open to the general public and that segregates adult material*  
20 *by restricted access to persons 18 years of age or older, so long*  
21 *as the gross receipts from transactions involving adult material*  
22 *do not exceed 5 percent of all gross receipts of the retail*  
23 *establishment.*

24 *(d) "Qualified tangible personal property" means any item that*  
25 *is not adult material, as defined by this section.*

26 *(e) "Sexually explicit conduct" means any of the following*  
27 *actual, but not simulated, conduct:*

28 *(1) Sexual intercourse, including genital-genital, oral-genital,*  
29 *anal-genital, or oral-anal, whether between persons of the same*  
30 *or opposite sex.*

31 *(2) Masturbation.*

32 *(3) Sadistic or masochistic abuse.*

33 *(4) Lascivious exhibition of the genitals or pubic area of any*  
34 *person.*

35 ~~33101. For purposes of this part, the following definitions~~  
36 ~~apply:~~

37 ~~(a) "Adult entertainment movie" means any motion picture that~~  
38 ~~is subject to the requirements of Section 2257 of Title 18 of the~~  
39 ~~United States Code.~~

1 (b) “Cable provider” means the person or entity providing cable  
2 television services through the cable television system.

3 (c) “Hotel owner or operator” means the person or entity that  
4 owns and operates any hotel, motel, bed and breakfast inn, or other  
5 similar transient lodging establishment.

6 (d) “Pay-per-view” means a delivery by a hotel owner or  
7 operator, cable provider, or satellite television provider of a single  
8 program or a specified group of programs, as to which each such  
9 single program is generally uninterrupted by commercial  
10 advertising messages and for which recipients are charged a  
11 separate fee for each program or specified group of programs.  
12 “Pay-per-view” shall also include delivery of a single program for  
13 which multiple start times are made available at time intervals  
14 which are less than the running time of such program as a whole.

15 (e) “Satellite television provider” means the person or entity  
16 providing satellite television services through a satellite  
17 broadcasting system.

18 (f) “Total gross charges” means any and all charges imposed  
19 on the purchaser related to the transmission of a pay-per-view adult  
20 entertainment movie.

21 33102. On and after May 1, 2008, in addition to any other tax  
22 imposed by this division, for the privilege of purchasing cable  
23 television or satellite television services, a tax is hereby imposed  
24 on each purchaser of a pay-per-view adult entertainment movie in  
25 this state at the rate of 25 percent of the total gross charges incurred  
26 by a purchaser for the pay-per-view adult entertainment movie.

27 33103. The tax imposed by this part shall be collected from a  
28 purchaser by a hotel owner or operator, the cable provider, or  
29 satellite television provider to the extent permitted by state or  
30 federal law. If the tax is not collected by the hotel owner or  
31 operator, the cable provider, or the satellite television provider,  
32 the purchaser shall pay the tax directly to the board.

33 33104.

34 33103. To the extent feasible or practicable, Section 1656.1 of  
35 the Civil Code, and the provisions of Part 30 (commencing with  
36 Section 55001), shall govern determinations, collections of tax,  
37 overpayments and refunds, and administration under this part.

38 33105.

39 33104. The board shall enforce the provisions of this part and  
40 may prescribe, adopt, and enforce rules and regulations relating



1 to the administration and enforcement of this part, including  
2 regulations regarding claims for refunds for taxes paid or incurred  
3 pursuant to this part. The board may prescribe the extent to which  
4 any ruling or regulation shall be applied without retroactive effect.

5 ~~33106.~~

6 33105. All amounts required to be paid to the state under this  
7 part shall be paid to the board in the form of remittances payable  
8 to the State Board of Equalization. It is the intent of the Legislature  
9 that the board shall transmit the payments, less refunds and the  
10 board's costs of administration, to the Treasurer to be deposited  
11 in the State Treasury to the credit of the Adult Entertainment Venue  
12 Impact Fund.

13 SEC. 8. Part 32 (commencing with Section 60131) is added to  
14 Division 2 of the Revenue and Taxation Code, to read:

15  
16 PART 32. ADULT ENTERTAINMENT EXCISE TAX  
17

18 60131. In addition to any taxes imposed by this division, to  
19 the extent permitted by state or federal law, there is hereby imposed  
20 a tax on each qualified business at the rate of ~~25~~ 8.3 percent of the  
21 qualified gross receipts of the qualified business.

22 60132. For purposes of this part, the following apply:

23 (a) "Qualified business" means a business engaged in those  
24 lines of business described in Codes 334612, 512110, 512120,  
25 512191, and 512199 of the North American Industry Classification  
26 System, 2007 edition, and that has more than 50 percent of its  
27 gross receipts derived from the production, distribution, or sales  
28 of movies or videos that are subject to the recordkeeping  
29 requirements of Section 2257 of Title 18 of the United States Code.

30 (b) "Qualified gross receipts" means gross receipts received in  
31 this state that are derived from the production, distribution, or sales  
32 of movies or videos that are subject to the recordkeeping  
33 requirements of Section 2257 of Title 18 of the United States Code.

34 60133. Every qualified business required to pay the tax imposed  
35 under Section 60131 shall register with the board and give the  
36 location of all production, distribution, or sales houses or offices  
37 or other places of business in this state, and any other information  
38 the board may require.

39 60134. The tax imposed and required to be paid under this part  
40 shall be made by remittance to the State Board of Equalization. It

1 is the intent of the Legislature that the board shall transmit the  
 2 payments, less the board's costs of administration, to the Treasurer  
 3 to be deposited in the State Treasury to the credit of the Adult  
 4 Entertainment-Venue Impact Fund.

5 60135. The State Board of Equalization may prescribe  
 6 appropriate rules and regulations to implement this part.

7 60136. This part shall become operative on the first day of the  
 8 sixth month following the effective date of this measure.

9 SEC. 9. The provisions of this act are severable. If any  
 10 provision of this act or its application is held invalid, that invalidity  
 11 shall not affect other provisions or applications that can be given  
 12 effect without the invalid provision or application.

13 SEC. 10. This act provides for a tax levy within the meaning  
 14 of Article IV of the Constitution and shall go into immediate effect.

16  
 17 CORRECTIONS:

18 Text—Page 12.